

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RODNEY HOLT</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 236,009
<b>STEVENSON COMPANY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>FREMONT INDEMNITY COMPANY &amp; INSURANCE COMPANY OF NORTH AMERICA</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and Insurance Company of North America appealed the preliminary hearing order dated September 29, 1998, entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

This claim involves one back, two insurance carriers, and two alleged accidents.

The Judge found that claimant sustained an accidental injury on July 10, 1998, that arose out of and in the course of employment and that claimant provided respondent with timely notice of that accident. The Judge then found that Insurance Company of North America was responsible for payment of those benefits by virtue of the last injurious exposure rule espoused in Helms.<sup>1</sup> The Judge did not address the question of whether claimant injured his back while working during the period of February 2, 1998, through April 22, 1998, as alleged.

Insurance Company of North America contends that any medical treatment that may now be needed relates to an alleged February 1998 injury when Fremont Indemnity provided insurance coverage and, therefore, any workers compensation benefits awarded claimant should be Fremont's responsibility. Also, Insurance Company of North America

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<sup>1</sup>Helms v. Tollie Freightways, Inc., 20 Kan. App.2d 548, 889 P.2d 1151 (1995).

contends that claimant failed to give respondent timely notice of the alleged July 10, 1998, accident.

Fremont Indemnity, which provided respondent with workers compensation insurance coverage until June 1, 1998, contends that claimant failed to prove (1) that he sustained personal injury by accident arising out of and in the course of his employment in February 1998, (2) that he provided respondent with timely notice of that accident, and (3) that he is entitled to temporary total disability and medical benefits for that alleged accident. Also, Fremont contends that any medical treatment that claimant may now require is related to the alleged July 10, 1998, accident rather than any incident that may have occurred during its coverage.

Claimant contends that he sustained a work-related accident from February 2 until April 22, 1998, and that the Judge erred by failing to order payment of both medical benefits for that accident and temporary total disability benefits for the period from April 23 through June 5, 1998.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds that the preliminary hearing order should be affirmed but the proceeding remanded for further findings.

The Appeals Board agrees with Judge Avery that Mr. Holt injured his back on July 10, 1998, while working for Stevenson Company, Inc. At the time of the injury, Mr. Holt was twisting metal, an activity that was required to assemble the equipment that the company assigned him to build. The medical evidence indicates that Mr. Holt probably sustained a herniated disc in the July 1998 accident.

Mr. Holt provided the company with notice of his back injury within 10 days of its occurrence. He testified that he told both his shop foreman and shop superintendent he hurt his back at work. That testimony is persuasive.

In his brief to the Appeals Board, Mr. Holt contends that he injured his back while working for Stevenson Company between February 2 and April 22, 1998. Because of that alleged accident, Mr. Holt requested both temporary total disability and medical benefits. Judge Avery's order, however, does not address that alleged period of accident or whether Mr. Holt is entitled to receive those requested benefits. Therefore, the issues surrounding that claim are not in a posture for Appeals Board review or even sufficiently delineated to determine if the Board has jurisdiction for review at this stage of the proceedings.

This proceeding should be remanded to Judge Avery to determine Mr. Holt's entitlement to the temporary total disability and medical benefits claimed in connection with the injury that allegedly occurred between February 2 and April 22, 1998.

For future reference, the Appeals Board requests concise briefs that are limited to a reasonable length.

**WHEREFORE**, the Appeals Board affirms the preliminary hearing order dated September 29, 1998, entered by Administrative Law Judge Brad E. Avery. Further, the proceeding is remanded for findings regarding claimant's request for temporary total and medical benefits for the injury that allegedly occurred between February 2 and April 22, 1998.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1998.

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BOARD MEMBER

c: Cynthia J. Patton, Topeka, KS  
Gary R. Terrill, Overland Park, KS  
Michael W. Downing, Kansas City, MO  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director